

**FILED**

**JUL 27 2006**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE EUSEBIO PINEDA-HURTADO,  
aka Jose Eusebio Pineda, Victor Manuel  
Rodriguez-Fuentes,

Defendant - Appellant.

No. 05-50414

D.C. No. CR-00-00174-BTM

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Southern District of California  
Barry T. Moskowitz, District Judge, Presiding

Submitted July 24, 2006<sup>\*\*</sup>

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Jose Eusebio Pineda-Hurtado appeals from the district court's order  
revoking his supervised release and imposing a 12-month sentence. We have

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<sup>\*</sup> This disposition is not appropriate for publication and may not be  
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction under 28 U.S.C. § 1291, and we affirm.

Pineda-Hurtado contends that the supervised release revocation statute, 18 U.S.C. § 3583(e), violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *United States v. Booker*, 543 U.S. 220 (2005), because the imposition of imprisonment upon revocation depends upon a fact not found beyond a reasonable doubt by the jury. This contention is foreclosed by *United States v. Huerta-Pimental*, 445 F.3d 1220 (9th Cir. 2006) (holding supervised release scheme does not violate the Sixth Amendment principles recognized by *Apprendi*, and *Blakely v. Washington*, 542 U.S. 296 (2004), and holding that revocation of supervised release and imposition of an additional term of imprisonment are discretionary and do not violate *Booker*).

**AFFIRMED.**